

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHNNY GUEST,

Plaintiff,

Case No. 3:11-cv-334

vs.

Judge Timothy S. Black

FLORIDA DEFAULT LAW
GROUP, P.L., *et al.*,

Defendants.

ORDER STRIKING PLAINTIFF'S AMENDED COMPLAINT (Doc. 14)

This case is before the Court *sua sponte* on Plaintiff's Amended Complaint.

(Doc. 14).

Plaintiff claims that he was entitled to file an amended complaint without leave of the Court. (Doc. 14). However, Rule 15 of the Federal Rules of Civil Procedure states:

- (1) A party may amend its pleading once as a matter of course within:
 - (A) 21 days after serving it, or;
 - (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is sooner.

Fed. R. Civ. P. 15(a).

Defendants filed motions to dismiss on October 19, 2011. (Docs. 10, 11).

Plaintiff was therefore free to file an amended complaint without leave of Court until

November 9, 2011. Plaintiff filed its Amended Complaint on December 21, 2011, well

after the expiration of the 21 day period. Accordingly, Plaintiff was required to seek leave of Court prior to filing the Amended Complaint. Therefore, this Court hereby **STRIKES** Plaintiff's Amended Complaint. (Doc. 14). Plaintiff may file a motion to amend the complaint within **14 days** of entry of this Order.¹

IT IS SO ORDERED.

Date: 12/30/11

Timothy S. Black
Timothy S. Black
United States District Judge

¹ "Because amended complaints supersede the original pleading, the filing of the amended complaint [may] technically render the pending motion to dismiss moot." *Yates v. Applied Performance Techs., Inc.*, 205 F.R.D. 497, 499 (S.D. Ohio 2002). The only circumstances in which filing an amended complaint may not moot a motion to dismiss is when the amended complaint is substantially identical to the original complaint. *Pethel v. Washington County Sheriff's Office*, 2:06cv799, 2007 U.S. Dist. LEXIS 60105, at *12-13 (S.D. Ohio Aug. 16, 2007). Should Plaintiff properly file a motion for leave to file an amended complaint, this Court would be inclined to grant such a motion absent a showing of prejudice by the Defendants. Accordingly, if a properly filed amended complaint will moot the pending motions to dismiss, a request to suspend briefing on the pending motions would be granted.